

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 670 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SITADEVI SHANKARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR NL PATEL for Petitioner
Mr.M.A.Bukhari A.P.P. for Respondents Nos.1 and 2
RULE UNSERVED for Respondent No. 3

CORAM : MR.JUSTICE A.K.TRIVEDI
and
MR.JUSTICE J.R.VORA

Date of decision: 09/05/2000

ORAL JUDGEMENT (Per:Trivedi.J)

#. Learned advocate Mr. N.L.Patel appearing for the petitioner is absent even in a third round call at 4.15 p.m. That the matter was on board on 8.5.2000. However, as learned advocate for the petitioner was not present, in the interest of justice it was adjourned and kept today.

#. Mr. M.A.Bukhari learned A.P.P. is present for respondent no.1 and has waived notice of Rule on behalf of respondents nos 1 and 2. Respondent no.3 is not served though Direct Service was permitted to the petitioner and as per the office submission, the sealed packet containing the notice of Rule was entrusted to the learned advocate for the petitioner but the same has not returned back nor any affidavit has been filed by the learned advocate for the petitioner and no effort is even made upto now by the learned advocate for the petitioner to serve the respondent no.3.

#. The petitioner, Sitadevi Shankerbhai Patel has filed the present petition with a prayer to claim a writ of habeas corpus or appropriate direction in the nature of habeas corpus for production of her missing son-Rajesh and her husband Shankerbhai Patel, who according to the petitioner are alleged to have been abducted by respondent no.3.

#. Finally vide order dated 10.8.1999 Rule was made returnable on 10.8.1999. That thereafter the respondent no.2 Police Inspector Shri More was directed to file progress report in the matter of tracing of the missing son and husband of the present petitioner vide order dated 17.2.2000 . The Division Bench of this court (Coram: H.R.Shelat and J.R.Vora.JJ) recorded that the investigation of CR No. 187 of 1999 is transferred by Government to CID(Crime) vide order dated 21.1.2000 and thereby adjourned the matter to 16.3.2000.

#. That P.I. Shri B.S.Pathan CID (Crime),. Surat City has filed affidavit in reply dated 9.5.2000 and has appended the true xerox copy of the statement of the present petitioner recorded during the investigation of CR No.187 of 1999 registered at Kapodara police station, district Surat. It is stated in the affidavit that the son of the present petitioner Rajesh and husband of the present petitioner Shankerbhai Patel both are suspected as accused of the said crime registered vide CR No.;187 of 1999. During the investigation, present petitioner has stated before the deponent on 24.2.2000 that she met her husband Shankerbhai Patel on the last Kite Flying festival (14.1.2000) and her husband has told her that

he is not coming to the house on account of fear of respondent no.3 (Goghabhai Bharvad) that said respondent no.3 is likely to implicate the husband of the petitioner Shankerbhai Patel and her son Rajesh in the false case of kidnapping of one Ramabhai the son of present respondent no. 3 Goghabhai. The petitioner Sitadevi has stated before P.I. Shri Pathan that if she happens to meet her husband again she would bring her husband before him. However, the petitioner had not turned up according to her assurance. P.I. Shri Pathan has stated in his affidavit that as Rajesh and Shankerbhai Patel were not traceable an application was moved before the competent court to declare them as absconding accused under section 82 of Cr.P.C. and the competent court has passed an order on 19.1.2000. A proclamation has also been published and in view of the same, it is further stated by P.I. Shri Pathan that there are no facts or circumstances to reasonably infer that the son and husband of the present petitioner said Rajesh and Shankerbhai Patel are illegally detained as alleged in the petition.

#. It is significant to note that though these facts were discussed in the open court on earlier dates, learned advocate for the petitioner has failed to file any rejoinder controverting the statements made by P.I. Shri Pathan CID (Crime) in the present affidavit. The learned advocate for the petitioner has not taken care to serve respondent no.3 nor has remained present since last 3 dates though the matter is kept for final hearing.

#. In view of the above stated discussion we have no reason to disbelieve the statement made on oath by P.I., Shri Pathan CID (Crime) vide affidavit dated 9.5.2000 and we hold that the petitioner has failed to satisfy the court that as alleged by the petitioner in the petition her son Rajesh and her husband Shankerbhai Patel are illegally detained by the respondent no.3 and as such the petition being not maintainable deserves to be rejected.

#. In view of the foregoing discussion the petition stands disposed of as rejected. Rule discharged.

(A.K.Trivedi.J)

(J.R.Vora.J)

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